MANAGING ALLEGATIONS AGAINST PEOPLE WHO ARE IN A POSITION OF TRUST IN RESPECT OF CHILDREN OR YOUNG PEOPLE (KCSIE 2022)

This policy sets out the terms of agreement reached by those participating in the Council's Consultation and Negotiation Framework

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1. Introduction and scope of policy

This policy sets out how to manage allegations made against employees, agency workers, contractors or volunteers which might indicate that they would pose a risk of harm if they continue to work in regular or close contact with children. Such allegations may come from either within the organisation or from an external third party (e.g. a parent, police, children's social work, health visitor). For the purposes of this policy, a child or young person is defined as a person under 18 years of age.

Where information suggests that there is concern about an employee, agency worker, contractor or volunteer's behaviours causing actual or potential risk to persons over 18 years of age, the senior manager should consider whether the behaviour may present a risk of harm to other children or young people (CYP) for whom the person is acting in a position of trust. If it is considered that there is a risk then this policy should be applied.

The policy should be used in all cases where an allegation is made against an employee, casual or zero hours staff, contractors/agency workers or volunteers (including school Governors) where it is alleged that this person has:

- Behaved in a way that has harmed a child, or may have harmed a child;*
- Possibly committed a criminal offence against or related to a child; or*
- Behaved towards a child or children in a way that indicates they may pose a risk of harm to children.*
- Behaved or may have behaved in a way that indicates that they may not be suitable to work with children**

*The first three bullet points above are contained within Working Together to Safeguard Children 20
**All four bullet points are contained within Keeping Children Safe in Education 2021.

NB: Unless specified otherwise in this policy, the term 'senior manager' refers to the senior manager/case manager within the organisation or setting with responsibility for managing allegations that fall within this policy. This is likely to mean, Headteacher, Principal, Head of Service, or other Senior Line Manager. The senior manager at [insert setting or department name] is [insert name, role].

This policy relates to people who are working (as an employee, agency worker, contractor or volunteer of/for Solihull MBC) in a position of trust in respect of children. This is regardless of whether the establishment, school or college is where the alleged abuse took place. Such allegations may have been formed at either the place of work, a location associated with the place of work or outside of the workplace. As an example, an allegation may relate to activities with children outside of the workplace such as sports coaching, scout movement, or the individual's own children. In those situations these procedures still apply.

When updated in 2020, Keeping Children Safe in Education (para 211 of the 2020 guidance) added a fourth bullet point under the behaviours which covers where an individual has behaved or may have behaved in a way that indicates they may not be suitable to work with children. The reason is because of transferrable risk. Where a member of staff or volunteer is involved in an incident outside of the establishment or school college, which did not involve children but could have an impact on their suitability to work with children. For example, a member of staff is involved in domestic violence at home. No children were involved, but establishments or schools/colleges need to consider what triggered these actions and could a child in the school trigger the same reaction, therefore being put at risk.

Keeping Children Safe in Education 2021 (Part Four) included guidance on the management of "low level" concerns which do not meet the threshold for a LADO referral.

Appendix 4 of this policy summarises this guidance and should be read in conjunction with the School's Code of Conduct and other safeguarding policies.

This Solihull Metropolitan Borough Council (SMBC) document sets out guidance and expectations as to how such allegations should be managed locally and at an operational level.

These are set out in accordance with the LSCP safeguarding procedures for managing allegations

2. Policy

All members of the community are entitled to receive care and protection from harm. Inappropriate behaviour towards children is not acceptable - this policy sets out the actions and responsibilities that will ensure that any concerns or allegations that fall within the scope of this policy are dealt with in a manner that is timely, fair, sensitive and compliant with statutory obligations (balancing the needs of the child or young person with the welfare of the person against whom the allegation has been made).

Any employees (or other persons undertaking work in the setting) disclosing information regarding inappropriate behaviour by colleagues will be listened to and supported.

SMBC has a responsibility for safeguarding and promoting the welfare of children and young people, and for ensuring that they are protected from harm.

We are committed to robust recruitment and selection procedures to ensure that all employees, contractors, agency workers and volunteers have been appropriately screened prior to appointment, and to the provision of appropriate guidance about safe working practice, boundaries and propriety.

We ensure child protection training is available to employees, contractors, agency workers and volunteers through induction programmes and through continuous training and development opportunities.

All employees, contractors, agency workers and volunteers have a duty to ensure that

children are safe and protected, and we all have a duty to ensure that, if there are any concerns relating to the welfare or safety of a child, the Local Safeguarding Children Partnership (LSCP) procedures are followed.

Other Solihull MBC HR policies and procedures may need to be considered and applied in conjunction with this policy for example:

- Whistleblowing policy
- Disciplinary procedure
- Recruitment and Selection policy (Safer Recruitment and Selection policy for Schools)

3. Purpose

It is essential that any allegation made against employees, agency workers, contractors or volunteers is dealt with fairly, quickly and consistently, in a way that provides effective protection for the child or young person (CYP) and, at the same time, supports the person who is the subject of the allegation. If it is decided that the allegation is not patently false and is not the subject of a criminal investigation, SMBC's Disciplinary Procedure should be followed where this applies in discussion with the Local Authority Designated Officer (LADO) and Human Resources (HR).

In circumstances where the allegation relates to a contractor, agency worker or volunteer working on behalf of the Local Authority, (and thus the scope of the SMBC Disciplinary Procedure does not apply) the matter would be investigated and action taken as appropriate under advisement from HR.

4. Principles

The principles behind the development of the policy are to develop a working environment and management style that:

- Ensures a focus on the management of potential risk to children and young people and where necessary ensures that appropriate services are considered in respect of those children and young people (in line with the principle that the CYP's welfare is paramount);
- Supports and respects the dignity of employees who become the subject of an allegation;
- Recognises and respects appropriate levels of confidentiality in dealing with sensitive discussions concerning allegations;
- Treats all employees in a fair, sensitive, consistent and timely manner, recognising the individual circumstances;
- Maintains accurate records in line with statutory requirements;
- Maintains appropriate communication and ensures support mechanisms are put in place for all parties involved in allegations made under this policy;
- Ensures that appropriate advice is sought when necessary and acted upon (e.g. from the Police, the LADO, Human Resources).

5. Context

Allegations may be made in a number of ways:

- Direct disclosure by (CYP);
- Indirect disclosure, e.g. through written work or art work;
- Complaints to the service/organisation manager from parents;
- Complaints to Children's Services Care Trust from parents;
- Complaints to Police from parents;
- Reports by other colleagues or agencies.

The context in which an incident occurs is crucial to understanding the incident and the definition to be ascribed to it.

In order to differentiate between incidents which are of a child protection nature, and those which are more properly dealt with as conduct or competency issues, or to identify those allegations which are vexatious, the allegation must be considered with regard to the standards that are normally expected of the employee and the circumstances in which the alleged incident occurred.

Any physical contact with children and young people could be open to misinterpretation. Perceptions and language can present very different views of the same incident, particularly where there is, or has been, earlier disagreement or challenge between the child and the member of staff or adult concerned.

There may be up to 3 strands in the consideration of an allegation:

- A Police investigation of a possible criminal offence;
- Enquiries and assessment by Children's Social Work about whether a child is in need of protection or requires Children's Social Work services;
- Consideration by the setting of disciplinary action in respect of the individual.

The fact that a person tenders his or her resignation, or ceases to provide their services, must not prevent an allegation being followed up in accordance with these procedures.

6. Responsibilities

Local Authority Designated Officer (LADO):

The LADO's responsibility is to provide advice and guidance in relation to all allegations made against adults and volunteers who work with children in Solihull (and in line with the LSCP safeguarding procedures);

To achieve this the LADO will:

- Manage and oversee the progress of individual cases of concern;
- Provide advice and guidance to employers, supply agencies and voluntary organisations;
- Ensure that all cases are dealt with as quickly as possible, consistent with a thorough and fair process;
- Maintain confidential records relating to allegations against persons working in a position of trust;

- Ensure that consideration is given to the needs of any child or young person identified within the allegation made (ensuring referrals are made as appropriate);
- Ensuring that the needs of the person who is the subject of the allegation are considered within the process;
- Ensuring that learning is considered and identified at the end of each case managed under these procedures.

***The Nominated Local Authority Designated Officer (LADO): Can be contacted via Tel:** 07795128638**, Email:** **LADO@solihull.gov.uk**

Senior Manager

The Senior Manager is the person within the organisation or setting with overall responsibility for managing allegations that fall within this policy.

It is the Senior Manager's responsibility to:

- Ensure that all employees, agency workers, contractors and volunteers in their setting are aware of this policy (i.e. how, where and to whom any concerns or allegations concerning other people should be escalated, including any allegations against the senior manager themselves) and are able to explain this process if questioned;
- Ensure that deputising arrangements for the "senior manager" role are in place where necessary (including relevant training for the nominated deputy) and that these arrangements are communicated to all employees, contractors and volunteers in their setting;
- Inform the LADO wherever possible within one working day, of all allegations that come to their attention (that fall under the scope of this policy). If it becomes apparent that the time limit has not been adhered to the senior manager should in any event inform the LADO at the earliest opportunity;
- Ensure the need for and review of any interim safeguarding arrangements are put in place for the duration of the process (including appropriate risk assessments);
- Co-operate with supply agencies or other providers of individuals on an agency or contract basis where an allegation arises to ensure that a thorough investigation is facilitated;
- Provide information as appropriate (and under advice from the LADO and/or HR) to the parent or carer of the CYP who is the centre of the allegation;
- Ensure the availability of regular ongoing communication and support to the employee both through external support (e.g. Occupational Health, Employee Assistance Programme) and regular review both during and after any investigation. Support should be balanced and take account of the particular nature of the allegation and the needs of the employee. Ensure consideration of the provision of ongoing support to the child or young person who is the centre of the allegation;
- Consult with HR at all stages of the procedure and ensure that relevant HR policies are complied with;
- Ensure effective and confidential reporting and recording mechanisms are in place which allow for the tracking of allegations, and the rationale for decisions made, through to the final outcome;
- Initiate and complete a referral to the Disclosure and Barring Service, or other professional bodies, as required, within the required timescales, sourcing

advice from Human Resources/DBS as required.

-

Employee who is the subject of an allegation under this policy:

It is an employee's responsibility (where they are the subject of an allegation) to:

- Co-operate with any requests from management during the procedure;
- Be available for meetings and comply with the relevant policy during their contracted working hours;
- Seek advice and support as appropriate (e.g. from their Trade Union if they are a member and/or HR) where they wish to do so.

All employees, agency workers, contractors and volunteers

It is the responsibility of all employees, agency workers, contractors and volunteers to:

- Report any allegation immediately to the appropriate senior manager. Act on the basis that the welfare of the child is paramount and that concerns must be reported immediately even where they may think there is misunderstanding or whether a report could jeopardise a colleague's career;
- Ensure that all information given as part of an investigation is based on facts.
- Be aware that they have a duty of care to protect children and failure to report allegations or concerns could itself lead to disciplinary action as this could place a CYP at risk.
- Co-operate with any investigation where an allegation is made against them personally.

Human Resources (HR):

It is the responsibility of HR to:

- Provide advice and guidance to managers on the application of this policy;

- Provide or arrange support for employees as appropriate in order to ensure the procedure for managing allegations is followed correctly;

- Support any formal investigations or other meetings (e.g. under the disciplinary or other HR policy), as necessary , including where the manager is co-operating with an investigation where they are not the employer (e.g. where an allegation is made against a contractor/agency worker)

7. Procedure for managing allegations

The definition for an allegation to be investigated under this procedure is derived from the statutory guidance in Working Together 2020 , Keeping Children Safe in Education 2021 and embedded in the LSCP procedures. These definitions are that there is a concern that a person working in a position of trust in respect of children or young people has:

• Behaved in a way that has harmed a child, or may have harmed a child;
• Possibly committed a criminal offence against or related to a child; or Behaved towards a child or children in a way that indicates they may pose a risk of harm to children;

- Behaved or may have behaved in a way that indicates that they may not be suitable to work with children.

*The first three bullet points above are contained within Working Together to Safeguard Children 2020.
**All four bullet points are contained within Keeping Children Safe in Education 2021.

Such concerns should be discussed with the LADO as soon as possible after receiving the information and ideally within one working day.

In circumstances where the allegation relates to the Senior Manager in the organisation or setting, the concern should be reported to the line manager, to whom the Senior Manager reports (e.g. Head of Service, or in a School the Chair of Governors). Advice should be taken from HR and/or the LADO in such circumstances.

8. Initial action

The Senior Manager (having established that the issue being referred may fall within the scope of this policy), will consult with the LADO, who will advise on the appropriate way forward.

In the event that a decision is taken that the allegation warrants further investigation, this is done on a without prejudice basis.

- The LADO will consider the appropriateness of discussing the case with agencies such as the Police or Children's Services, as part of the consultation process. In determining whether or not the threshold for a position of trust meeting has been met, it may be necessary to undertake enquiries of those. When these enquiries are[HH(M1] completed a decision will be made as to whether a position of trust meeting is to be called by the LADO service.

Examples of when it is unlikely that the allegation will lead to a position of trust meeting are:

- The allegation may have been prompted by inappropriate behaviour by an employee, contractor/agency worker or volunteer but a child protection issue does not arise. In this case, there may be a need to investigate further and, in conjunction with Human Resources, decide whether action should be taken in accordance with disciplinary procedures. The Senior Manager takes the lead on this, following advice and guidance from Human Resources (and the LADO).
- The allegation was deemed false or unfounded from the outset (see section 15).

N. B. Consideration should be given to specific circumstances. If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take into account that teachers and other school and

college employees, contractors, agency workers or volunteers are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour.

In respect of initial fact finding, please note the following:

- CYP should not be asked to write a statement of the incident unless there are exceptional circumstances warranting this. In these exceptional circumstances guidance must be sought from the LADO and the child or young person will be appropriately supported;
- The person who is the subject of the allegation should not be informed of specific details of what is alleged since this may compromise the integrity of any future investigations by either the employer or other agencies (e.g. police). Advice on what to say to the employee should be sought from HR.

9. Suspension

The decision to suspend the employee who is the subject of the allegation should ideally be considered at the Position of Trust meeting (POT). The decision to suspend the employee ultimately rests with the Senior Manager, in conjunction with the LADO and Human Resources. The decision to suspend the use of a contractor/agency worker/volunteer also rests with the Senior Manager in conjunction with the LADO (e.g. as an interim safeguarding measure pending an investigation).

Where the allegation is against a contractor/agency worker/volunteer, in no circumstances should a setting decide to permanently cease to use the services of that person due to safeguarding concerns, without finding out the facts and liaising with the LADO to determine a suitable outcome.

The Senior Manager will usually take the lead (in any investigation) because agencies do not have access to children or other school staff, so they will not be able to collect the facts when an allegation is made, nor do they have all the relevant information required by the LADO as part of the referral process. (KCSIE 2021 Para 357).

If, prior to the POT meeting, there is a concern relating to the individual remaining on-site, the Senior Manager may need to consider interim safeguarding arrangements. It would be appropriate to seek HR advice before asking an individual to refrain from attending work (pending further information which would support, or not support suspension).

A Risk Assessment (see Appendix 3) should be completed by the Senior Manager for all cases in order to determine whether the employee should be suspended or not.

The assessment should take into account the context of the allegation, background information in relation to the employee, and any outcome following the POT meeting. It should also take into account whether a temporary transfer, or period of paid leave, is appropriate as an alternative to suspension. Suspension should be considered only in circumstances where there is cause to suspect a CYP is/are at risk of harm, there is a risk that the person remaining at work could compromise the investigation or the case is so serious that it might be grounds for a gross misconduct allegation. The assessment

must be recorded and a copy kept on file. If the decision is made not to suspend the employee, a copy of the risk assessment and any alternative measures should be shared with your HR Advisor.

When an employee is suspended the Senior Manager will write to them confirming the suspension. This letter will confirm the allegations which are to be investigated. In this letter they will be given the name of a Manager or colleague within the workplace who will be the nominated point of contact whilst the investigation progresses. In addition, the provision of Occupational Health support should be offered alongside details of the Employee Assistance Programme (EAP). Employees should be reminded of their rights in relation to Trade Union membership.

(NB the Sickness Absence Guidance Notes on solgrid/extranet advise on how to access these services)

Where the allegation is against a volunteer, the appropriate way forward will be considered at the POT meeting whether it is appropriate for them to continue undertaking voluntary work. A similar risk assessment will be completed for volunteers.

Where the allegation involves an agency worker, their employer will be contacted in order that they can take the appropriate action.

Whilst suspension is not punitive, and is undertaken on a 'without prejudice' basis, this can have serious consequences for individuals and their well-being and reputation. This process seeks to ensure that suspension is only undertaken when appropriate and necessary. The risk assessment is the evidence and rationale for any suspension decision and provides the basis for any subsequent review of the arrangements.

Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the senior manager should consider how best to facilitate that. Most employees or volunteers in this situation will benefit from some help and support both during and after the return to work after a stressful experience. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The senior manager should also consider how the person's ongoing contact with the CYP who made the allegation can best be managed (e.g. where they are still in receipt of the service from the provision).

It may be appropriate on conclusion of a case (particularly where an individual has been suspended) to consider undertaking a Stress Risk Assessment (council employees) or Stress Risk Assessment (schools employees).

For more information on suspension, please refer to the Disciplinary Procedure (link).

If the outcome of the position of trust enquiry suggests that the matter does not meet the thresholds for further LADO intervention, but needs further investigation, the Disciplinary Procedure may need to be followed.

10. Position of Trust (POT) meeting

The POT meeting will be conducted in accordance with LSCP procedures.

The purpose of the meeting is to:

- Consider the risk to the child/ young person/ other children and young people;
- Gather information from all parties present.
- Determine the need for investigation and by whom;
- Establish a clear action plan with timescales;
- Ensure employees, pupils and/or young people receive appropriate support;
- Consider the need to inform relevant parties;

- Jointly consider how to manage any media interest;
- Discuss possible suspension/temporary redeployment;
- Consider the need for a Communication Strategy;
- Ensure regular review of actions arising.

Attendance at a POT Meeting:

The meeting is convened and chaired by the LADO office. Attendance will be determined by LSCP procedures, but will usually include representatives from Education & Children's Services, the Police and HR along with the appropriate Manager for the subject of the allegation. **The process does not allow for the employee, contractor/agency worker or volunteer who is the subject of the allegation to attend the meeting** The POT meeting will agree when and how the employee will be informed.

Where the individual is employed, contracted/supplied or volunteers in more than one position of trust, any other agencies (e.g. scout movement) will also be invited to attend the meeting.

Communication Following the POT Meeting:

The Minutes of the POT meeting, including actions, will be circulated by the LADO office of the meeting to relevant parties. The minutes will not be shared with the employee/volunteer who is the subject of the meeting, or any parent/carer of any named child. The minutes are circulated on a need to know basis. Please refer to Section 14 regarding confidentiality.

The following should be informed of the outcome of the investigation:

- The child/children making the allegation and their parent/carer will be informed that the matter is being dealt with under the LADO procedures (also informing them that the matter is confidential and must not be discussed). It will not, however, be normal custom and practice to disclose details or the outcome of a disciplinary process to parents, carers or other parties. Disclosure of the information may breach the Data Protection Act, Common Law Duty of Confidentiality and the Human Rights Act. Each case should be considered on an individual basis, taking account of any risk to a child balanced against the rights and freedoms of the employee. For

example, it may be appropriate to confirm that the process has been concluded but the deliberations of any disciplinary hearing undertaken by the employer, and the evidence considered when arriving at a decision should not be disclosed.

- The POT will discuss how and by whom the employee, contractor, agency worker or volunteer who is the subject of the allegation is to be advised of the allegation and that a POT meeting has taken place. This should include the likely course of action. A record should be kept on the individual's personnel file in line with the statutory guidance (Keeping Children Safe in Education 2021 and Working Together to Safeguard Children 2020).

- For clarity, where the allegation has taken place in a setting outside of school e.g. Scouts, guides football club, the Chair of Governors should be informed of the likely course of action.

11. Investigating the allegation

The POT meeting will determine the nature of the investigations required. There are mainly three types of investigation, and more than one may be applicable at any one time:

- There are child protection issues involved and there needs to be an investigation under Section 47 of The Children Act;
- There is a Police investigation regarding a possible criminal act against a child;
- There is a need for an internal disciplinary investigation.

Employees who are the subject of such investigations should be aware that the Police and Children's Social Work Services enquiries will need to consider the implications of any contact that the employee has with any CYP (including their own children if applicable).

A disciplinary investigation should not commence until the outcome of any child protection or Police investigation is known, unless there are exceptional circumstances. Consent must be sought from the Police and/or Children's Social Work Services (via the LADO office) where they have undertaken an investigation, prior to initiating an internal disciplinary investigation.

The disciplinary investigation should follow the Disciplinary Procedure.

12. Action following initial consideration

If it is decided that the allegation does not involve a potential criminal or Children's Social Work investigation, the Senior Manager, in conjunction with the LADO, needs to decide how to progress the matter. There may be elements of an allegation which suggest a breach of standards of behaviour or propriety, or which pose a risk to the welfare of CYP. This may result in convening or reconvening a POT discussion.

Consideration should be given to:

- The context in which the allegation occurred and whether this provides further insight which may mitigate risk;
- The type of activity the individual is expected to undertake;
- The level of access to CYP this provides;
- The indicative risks presented by the nature of the allegation;
- Any mechanisms that may exist to reduce or manage the risk.

Any internal investigation may determine that disciplinary action is not necessary and find no case to answer. It is important that a clear and comprehensive summary of any allegations made, details of how the allegation was followed up and resolved, and **a note of any action taken and decisions reached, is kept on a person's confidential personnel file, and a copy provided to the person concerned.**

Children and young people should **not** be required to write a statement of the incident because this matter may form part of police or Children's Social Work. This is a matter for the investigation agencies to undertake. Where an account is needed from any CYP this must be gathered (in an age appropriate manner) by an adult with the relevant skillset, and with support provided for the child if necessary.

If it is felt that the allegation does not require formal disciplinary action, the Informal Resolution section of the Disciplinary Procedure may be appropriate to follow within 3 working days of the completion of the initial discussions. The Senior Manager should contact HR for advice and guidance. If it is decided that a formal disciplinary investigation is required, the Formal Stage of the Disciplinary Procedure should be followed.

Outcomes from the Position of Trust Process:

Working Together to Safeguard Children 2020 has the following four definitions which will be used when determining the outcome of allegation investigations:

- **Substantiated:** there is sufficient evidence to prove the allegation;
- **Malicious**: there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
- **False:** there is sufficient evidence to disprove the allegation;
- **Unsubstantiated**: there is insufficient evidence to either to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

NB - Keeping Children Safe in Education 2021 provides an additional definition in relation to School employees:

- **Unfounded**: to reflect cases where there is no evidence or proper basis which supports the allegation being made.

13. Keeping records and references

The record of the LADO involvement is the responsibility of the LADO office and records are kept in a secure electronic recording system.

Details of allegations that are found to have been malicious or false should be removed from all confidential personnel records held either in the setting, or the relevant HR department. However, for all other allegations, the following information should be kept on the file of the person accused:

• a clear and comprehensive summary of the allegation;
• details of how the allegation was followed up and resolved;

• a note of any action taken, and decisions reached and the outcome as categorised above;
• a copy provided to the person concerned, where agreed by children's social care or the police; and,
• a declaration on whether the information will be referred to in any future reference.

The purpose of the record is to enable accurate information to be given in response to any future reference request, where appropriate. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time.

Establishments, Schools and colleges have an obligation to preserve records which contain information about allegations of sexual abuse for the Independent Inquiry into Child Sexual Abuse (IICSA), for the term of the inquiry (further information can be found on the IICSA website). All other records should be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

The Information Commissioner has published guidance on employment records in its Employment Practices Code and supplementary guidance. This provides some practical advice on employment records retention

Cases in which an allegation was found to be false, unfounded, unsubstantiated or malicious should not be included in employer references. Any repeated concerns or allegations which have all been found to be false, unfounded, unsubstantiated or malicious should also not be included in any reference. (See Keeping Children Safe in Education 2021 paragraphs 203-205 for further information on references.)

Substantiated allegations should be included in references, provided that the information is factual and does not include opinions.

Senior Managers are responsible for keeping records and tracking progress of case management in line with the requirements of their setting in order that they fulfil any obligations to statutory bodies.

Record keeping in relation to young people who are involved in making the allegation will be in line with the setting's recording policies.

14. Confidentiality

Confidentiality should be maintained when an allegation is made. However, there may be a need to share information with relevant agencies, for example, at a POT meeting. This would be on a 'need-to-know' basis. If you have any doubts, please consult your Manager. Any enquiries from the press should be directed to the Press Office unless it is a Freedom of Information or Data Protection request, in which case the Council's Corporate Information Governance Manager should be contacted.

Any information to be disclosed to parents or carers must be the subject of careful

consideration and take account of advice from HR, Information Governance and the LADO. The rights of the employee/volunteer involved must be balanced against the risks to a CYP and/or the needs of parents or carers. It is not normal practice to disclose details or the outcome of a disciplinary process to parents, carers or other parties. However, it may be appropriate to confirm that the process has been concluded and appropriate action has been taken. The deliberations and outcomes of a disciplinary hearing and the evidence considered when arriving at a decision should **not** be disclosed

Disclosure of more detailed information may breach the Data Protection Act, Common Law Duty of Confidentiality, employment rights and the Human Rights Act.

It is good practice that parents and carers should also be made aware of the requirement to maintain confidentiality about any allegations made against individuals. There is specific legislation relating to teachers that whilst investigations are ongoing as set out in section 141F of the Education Act 2002 (Keeping Children Safe in Education 2020. If parents or carers wish to apply to the court to have reporting restrictions removed, they should be told to seek (their own) legal advice (As per paragraph 371 of Keeping Children Safe in Education 2021.)

If Senior Managers are concerned about how to manage potential public interest in a case, they can seek advice from the Press Office and HR. This may relate to internal communications (colleagues, pupils, parents) or the wider general public, including the press.

15. Action to be taken in respect of false allegations

If an allegation made by a CYP is proved to be false and/or malicious, action should be taken to determine whether the person who made the allegation is in need of services, or may have been abused by someone else. The child protection policy should be adhered to if there is a concern that the child has been abused.

In the case of a school pupil deliberately inventing or making a malicious allegation, the Headteacher should also consider taking action in accordance with the school's Behaviour Policy and recorded on the pupil file, as appropriate.

If an allegation is made by an employee or volunteer and found to be false and/or malicious, consideration should be given to an investigation taking place in accordance with Disciplinary Procedure.

The Police may also consider taking action against the individual making the allegation where the allegation is proven to be false or malicious.

If it is clear to the Senior Manager and the LADO that the allegation is demonstrably false or unfounded, the employee should be informed verbally, and in writing, of the allegation, that it is without foundation and that no further action will be taken (please refer to Section 13 of this policy – Keeping Records and References). Where appropriate, and if requested, support should be offered, which could include Occupational Health and Counselling services.

16. Learning lessons

At the conclusion of a case in which an allegation *is* substantiated, the LADO should

review the circumstances of the case with the case manager to determine whether there are any improvements to be made to the setting's procedures or practice to help prevent similar events in the future. This should include issues arising from a decision to suspend an employee, the duration of the suspension and whether or not suspension was justified. Lessons may also be learnt from the use of suspension when the individual is subsequently reinstated. This should involve revisiting the original risk assessment document that would have been completed prior to the suspension.

17. Resignation

If the person who is the subject of an allegation resigns, or ceases to provide their services, this should not prevent an allegation being followed up in accordance with this policy. **A referral to the DBS *must* still be made, if the criteria are met.** See 18 below for more details and a link to the Government DBS referral guidance.

Where a person has resigned during the disciplinary process, and served a notice period, the investigation and any subsequent hearing should continue (if appropriate and on advice from HR in their absence – page 6 of the Disciplinary Procedure provides guidance on this).

All individuals have a contractual notice period which should be served on resignation. Where they choose to breach their contract and resign with immediate effect the matter must conclude in their absence with investigation meetings and hearings (where appropriate) proceeding in line with the Disciplinary Policy.

The fact that an employee or volunteer resigns, or ceases to provide their services, must not prevent an allegation being followed up in accordance with this procedure or the Disciplinary Procedure. It is important that every effort is made to reach a conclusion in all cases of allegations that have a bearing on the safety or welfare of CYP.

18 Referral to the Disclosure and Barring Service (DBS) and other professional regulatory bodies

If the allegation is substantiated and the person is dismissed, the employer ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the LADO should discuss with the case manager and their HR adviser. This discussion will inform whether the setting will make a referral to the DBS for consideration of inclusion on the barred lists is required.

In the event a referral is made to the DBS, information on how to undertake this can be found on the relevant section of the Government website.

In the case of a member of professional staff there will also be a decision as to whether the matter should be referred to the relevant professional regulatory body e.g. Teaching Regulation Agency (TRA) for Teachers, Health and Care Professions Council (HCPC) for Social Workers, Social Work England (SWE) to consider prohibition. This is not an exhaustive list of relevant professional bodies and it is for Senior Managers to ensure they meet their obligations in this respect.

Please note there is a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child.

Settings have a legal duty to refer to the DBS anyone who has harmed, or poses a risk of harm, to a child, or if there is reason to believe the member of employees has committed one of a number of listed offences, and who has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left.

Advice should be sought from HR before referral in all circumstances.

Where the allegation has taken place within a Council or Local Authority maintained education setting and the senior manager believes that the criteria has been met for a DBS referral, the evidence should be presented to the Head of Human Resources and the relevant Assistant Director who will then take the decision to refer.

This process does not prevent a referral being made in good faith and in the interests of safeguarding CYP, but where the legal duty has not been met. For example, where there are strong concerns but the evidence is not sufficient to justify dismissing or removing the employee from working with children or vulnerable adults.

'Settlement agreements' (sometimes referred to as compromise agreements), by which a person agrees to resign if the employer agrees not to action in relation to their employment, and both parties agree a form of words to be used in any future reference, ***should not be used****, where there are allegations that indicate the person is a risk or poses a risk of harm to children or deemed not suitable to work with children.*

Such an agreement will not prevent a thorough police and/or Establishment, school or college investigation where that is appropriate.

A settlement agreement which prevents a DBS referral being made when the criteria are met would be likely to result in a criminal offence being committed.

The DBS will consider whether to bar the person from working with CYP. Referrals should be made as soon as possible after the resignation or removal of the individual.

19. Information sharing

In a POT meeting, or initial evaluation of the case, the agencies concerned must share all relevant information they have about the person who is the subject of an allegation and about the alleged victim. Managers attending the POT meeting should be prepared with appropriate information about the person involved, e.g.:

- Full name and current address;
- When the DBS check was completed;
- Employment start date;
- Involvement in youth activities;
- Details of any children that the employee, contractor, agency worker or volunteer is parent/carer to (if known in the case of contractors, agency workers or volunteers);

- Details of any historic allegations that are still lawfully on the record; Any other information that could be helpful or relevant.

In accordance with LSCP procedures, from the outset of an investigation the Police should obtain consent from the individuals concerned to share the statements and evidence they obtain with the Council. This is so that the evidence can support the progression of any disciplinary investigation. This should be done as their investigation proceeds, rather than after it has concluded. This will enable the Police to share relevant information, without delay, at the conclusion of their investigation or any Court case.

Children's Social Work Services should adopt a similar procedure when making enquiries to determine whether the child named in the allegation is in need of protection or services, so that any information obtained in the course of those enquiries, which is relevant to a disciplinary case, can be passed to the Council without delay.

Further information on information sharing is available in the Government publication 'Information sharing: advice for practitioners providing safeguarding services'

Appendix 1

Definitions

Significant Harm

This is the threshold whereby compulsory Social Work intervention must take place. This was introduced by the Children's Act 1989 and is defined by the Law Commission as: "Harm as a concept should be taken to include not only ill-treatment (including sexual abuse and forms of ill-treatment that are not physical), but also the impairment of physical or mental health and the impairment of physical, emotional, social or behaviour development"

Abuse

Abuse can consist of physical, sexual, neglect and emotional. The definitions of abuse are as follows:

1. *Physical Abuse* - includes hitting, slapping, pushing, kicking, mis-use of medication, restraint or inappropriate sanctions.
2. *Sexual Abuse* - includes rape, sexual activities to which a child has not/could not consent or was pressurised into consenting. Sexual activities could include physical contact or non-physical contact. Non-physical contact could be encouraging children / young people to watch sexual activities, or behave in a sexually inappropriate way.
3. *Neglect* - is the persistent failure to meet the basic physical or psychological needs of a child / young person and likely to result in the serious impairment of the child / young person's health or development. It includes a failure to provide access to appropriate health, social care or educational services, or withholding the necessities of life such as medication, adequate nutrition, clothing, shelter and heating.
4. *Emotional Abuse* - is the persistent, emotional maltreatment of a child / young person. This could have a severe and adverse effect on a child's / young person's development. This may involve conveying to the child / young person that they are worthless, or unloved, inadequate or valued only in so far as they meet the needs of another person. It also includes humiliation, blaming, controlling, intimidation, isolation or withdrawal from services or supportive networks.

Some level of emotional abuse is involved in all types of maltreatment of a child / young person, although it may occur alone.

Positions of trust

Those working with children and young people should understand that they are in positions of power and trust in relation to these groups. There is potential for exploitation and harm to children and young people, and employees have a responsibility to ensure that an unequal balance of power is not used for personal advantage or gratification. Employees should always maintain professional boundaries and avoid behaviour which might be misinterpreted by others.

Appendix 2

Information guide for employees facing allegations

The aim of this information guide is to explain the processes involved, and the support and guidance available, if it is alleged that you have:

- harmed a child, or put a child at risk of harm;
- committed a criminal act toward a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates you may pose a risk of harm to children
- Behaved or may have behaved in a way that indicates that you may not be suitable to work with children

Initial action

When the allegation is made, your Manager, or the designated person within your organisation, should consult the LADO to consider the next action, taking advice from Children's Social Work and/or the Police, as needed. The Police and/or Children's Social Work may advise or instruct that you are not to be told about the allegation immediately. This is because sharing the information could compromise the integrity of their own investigation
Your manager's decision, in consultation with the LADO, will be one, or a combination of, the following:

a) The child / young person is alleged to have suffered, or is likely to suffer, significant harm, which requires immediate referral to Children's Social Work;
b) A criminal offence is alleged which requires referral to the Police;
c) The allegation represents poor or inappropriate behaviour, which should be considered under Disciplinary and/or Capability Procedures, including referral, if appropriate, to the appropriate professional regulatory body (e.g. the Teaching Regulation Agency (TRA), Health and Care Professions Council (HCPC), or appropriate medical college. Social Work England (SWE). This is not an exhaustive list);
d) The allegation is clearly and demonstrably without foundation, and no further action will be taken. There is clear statutory guidance governing what is kept on an employee's record in these circumstances. Advice can be sought from your Union or HR in this respect.

If the conclusion of the initial discussions are a) or b) above, a meeting will be called to explore the concerns and agree next steps. This meeting is known as a Position of Trust (POT) meeting. The POT meeting Discussion will involve your senior manager, the LADO and a representative from HR. It may also involve, depending on the circumstances, the Police, Children's Social Work or other Agencies (e.g. if you undertake other regulated activity on a volunteer basis) You will not be involved in a POT meeting as these are professional discussions about potential risk arising from the allegations. The discussion will also focus on the needs of the child/ren or young people/person (CYP) who may be at risk and will determine what action should be taken regarding further investigation.

You should be aware that your Senior Manager (attending the POT meeting) will be

asked to provide details of any other children with whom you have contact (e.g. your own children, or children you interact with e.g. via voluntary or other paid activities). This is part of the procedure to ensure all potential safeguarding risks are explored and addressed.

If the initial discussions conclude the situation is as outlined in c) above, an investigation will be initiated under the organisation's Disciplinary and/or Capability Procedures.

If the conclusion is as outlined in d) above, you should be advised, both verbally and in writing, that the allegation is without foundation and that no further action will be taken.

Possible types of investigation

Any one or a combination of the following investigations may take place:

- Child protection enquiries by Children's Social Work;
- Criminal investigation by the Police;
- Disciplinary/capability investigation.

You should be aware that any disciplinary investigation is usually delayed until external agency investigations are completed, unless prior agreement is reached. This is because whilst disciplinary investigations should be conducted as speedily as possible, this should also be balanced against legal requirements and directions from the external agencies who may be undertaking investigations as referred to above. Statements taken in external investigations may form part of the evidence in subsequent internal disciplinary proceedings.

Suspension

Your Manager will consult with the LADO and Human Resources, and consider recommendations from the POT meeting, if appropriate, before any decision to suspend (on full contractual pay and benefits) is taken. A risk assessment will be completed by the Senior Manager prior to any decision to suspend. This risk assessment should be documented using the form appended to this policy.

The decision to suspend should take account of all the relevant information including that shared at the POT Discussion.

The following are examples of the issues considered by the risk assessment process:

- A child or young person may be at risk of harm;
- The allegations are so serious that dismissal for gross misconduct is possible;
- The conduct of the investigation may be unimpeded if you are not suspended.

Notwithstanding the above, it must be stressed suspension is a neutral act and is not an automatic response to a set of circumstances. You should be assured that suspension is not disciplinary action in and of itself.

You can expect that alternatives to suspension should always be considered, e.g. leave of absence, transfer of duties or additional supervision.

Where suspension is being considered, an interview will be arranged where possible.

Where this is not possible the suspension will be communicated by telephone or letter.

Our Disciplinary policy allows for you to be accompanied by a Trade Union Representative, or a workplace colleague in formal meetings held under the disciplinary procedure; you are advised to seek the assistance of your Union Representative. If you are suspended, one of his/her roles will be to promote your interests and raise issues that may be of concern to you. Where there are difficulties with the availability of a Trade Union representative when suspension is being contemplated this should not delay the meeting.

The suspension meeting will provide appropriate information about the nature of the concerns made and the rationale for the view taken about the need to suspend (or other safeguarding measures that may need to be put in place). This meeting may agree with you what communication (if any) is appropriate to share and with whom. The meeting will make clear to you, your own obligations around confidentiality and information sharing.

A suspension meeting is not an investigation meeting.

Information concerning any suspension will be shared with those attending the Position of Trust Meeting.

You should expect that any suspension will be treated as strictly confidential and only shared with those who have a legitimate 'need to know'.

If you are suspended, any individuals who may be required on a Disciplinary Panel in the future will be given limited, if any, information, in order that any future process is not prejudiced.

If despite the assurances above, for matters outside of the control of your Senior Manager, the matter becomes common knowledge, it may be necessary to issue a brief statement, agreed by the agencies concerned, to parents, pupils and the public. Your Manager will discuss with you support and ongoing communication.

Support

You should expect to be:

- Advised to contact your Union Representative (if you are a member);
- Kept up-to-date with the progress of your case (usually by the Senior Manager, or your Union Representative via HR (with your agreement); Given a support contact, if you are suspended, who will update you about normal organisational activities as appropriate. Social contact with colleagues should not be precluded, unless detrimental to the investigation. The type of information and frequency of contact should be agreed, but colleagues should not comment on, or discuss, the investigation with you;
- Allowed to access your council records in line with GDPR, under supervision, in order to collect information relevant to your case;
- Offered a staff counselling service, Employee Assistance Programme (EAP) and/or Occupational Health support, if available;
- Communicated with regarding the confidentiality required about the allegation/enquiry with your peers and the wider community

This may be a stressful time so, in addition to contacting your Union Representative, you

are advised to see your GP if you think your health may be affected. It may be appropriate either during the suspension, or on a return to work to complete a stress risk assessment.

Return to work

If you have been suspended and it is decided you should return to work, you will be supported back into the workplace in a sensitive and appropriate manner. Assistance can be sought from your Union Representative, HR and your line manager.

Appendix 3

Managing allegations against employees
(Children and Young People)

Risk Assessment for Suspension

Suspension should only be considered if one or more of the following apply:

- Children or Young People are at risk of intimidation or harm
- The employee's presence may prejudice the investigation and redeployment to mitigate this is not possible

Suspension is not normally appropriate in cases of minor misconduct

The following factors need to be considered:

Alternatives to Suspension	**Impact of Transfer**
- Assess other options, including a suitable alternative role or temporary transfer	
Nature of the Allegation	**Consideration**
- Duration and frequency - Degree of threat or coercion. - Extent of pre-meditation. - Degree and nature of alleged harm.	
Investigation	
- Possibility of the investigation being impeded should the employee remain at work.	
Information re: Employee/Volunteer who is accused of the allegation	
- Previous concerns. - Previous allegations. - Contact with customers, or CYP (i.e. needs and vulnerability).	
Health & Safety	
- Potential risks to the employee's health and safety should the employee remain at work.	

Risk identified and action plan:

Decision to suspend: YES/NO

Date of decision:

Name of Senior Manager/Headteacher responsible for decision:

APPENDIX 4 - Concerns that do not meet the harm threshold (Keeping Children Safe in Education Chapter Four, Section Two).

Establishments, Schools and Colleges should have policies and processes to deal with concerns (including allegations) which do not meet the harm threshold set out in this policy.

Concerns may arise in several ways and from a number of sources. For example: suspicion; complaint; or disclosure made by a child, parent or other adult within or outside of the organisation; or as a result of vetting checks undertaken. It is important that establishments, schools and colleges have appropriate policies and processes in place to manage and record any such concerns and take appropriate action to safeguard children.

As part of their approach to safeguarding, establishments, schools and colleges should ensure that they promote an open and transparent culture in which all concerns about all adults working in or on behalf of the school or college (including supply teachers, volunteers and contractors) are dealt with promptly and appropriately.

Creating a culture in which all concerns about adults (including allegations that do not meet the harms threshold are shared responsibly and with the right person, recorded and dealt with appropriately, is critical.

If implemented correctly, this should encourage an open and transparent culture; enable establishments, schools and colleges to identify concerning, problematic or inappropriate behaviour early; minimise the risk of abuse; and ensure that adults working in or on behalf of the establishment, school or college are clear about professional boundaries and act within these boundaries, and in accordance with the ethos and values of the institution.

What is a low-level concern?

The term ‘low-level’ concern does not mean that it is insignificant, it means that the behaviour towards a child does not meet the threshold set out in this policy

A low-level concern is any concern – no matter how small, and even if no more than causing a sense of unease or a ‘nagging doubt’ - that an adult working in or on behalf of the school or college may have acted in a way that:

• is inconsistent with the staff code of conduct, including inappropriate conduct outside of work, and

• does not meet the allegations threshold or is otherwise not considered serious enough to consider a referral to the LADO.

Examples of such behaviour could include, but are not limited to:

• being over friendly with children;

• having favourites;

• taking photographs of children on their mobile phone;

• engaging with a child on a one-to-one basis in a secluded area or behind a closed door; or,

• using inappropriate sexualised, intimidating or offensive language.

Such behaviour can exist on a wide spectrum, from the inadvertent or thoughtless, or behaviour that may look to be inappropriate, but might not be in specific circumstances, through to that which is ultimately intended to enable abuse.

It is crucial that any such concerns, including those which do not meet the allegation/harm threshold, are shared responsibly and with the right person, and recorded and dealt with appropriately. Ensuring they are dealt with effectively should also protect those working in or on behalf of schools and colleges from potential false allegations or misunderstandings.

Staff code of conduct and safeguarding policies

As good practice governing bodies and proprietors should set out their low-level concerns policy within their staff code of conduct and safeguarding policies as set out in Part two of Keeping Children Safe in Education 2021.

They should make it clear what a low-level concern is and the importance of sharing low-level concerns, and an explanation of what the purpose of the policy is – i.e. to create and embed a culture of openness, trust and transparency in which the school's

or college's values and expected behaviour which are set out in the staff code of conduct are constantly lived, monitored and reinforced by all staff.

As set out in Part two of Keeping Children Safe in Education, the governing body or proprietor should ensure their staff code of conduct, behaviour policies and safeguarding policies and procedures are implemented effectively, and ensure appropriate action is taken in a timely manner to safeguard children and facilitate a whole establishment, school or college approach to dealing with any concerns

Schools and colleges can achieve the purpose of their low-level concerns policy by, for example: • ensuring their staff are clear about what appropriate behaviour is, and are confident in distinguishing expected and appropriate behaviour from concerning, problematic or inappropriate behaviour, in themselves and others;

• empowering staff to share any low-level safeguarding concerns with the designated safeguarding lead (or a deputy);

• addressing unprofessional behaviour and supporting the individual to correct it at an early stage;

• providing a responsive, sensitive and proportionate handling of such concerns when they are raised; and,

• helping identify any weakness in the school or colleges safeguarding system.

Sharing low-level concerns

Schools and colleges should ensure that their low-level concerns policy contains a procedure for sharing confidentially such concerns which is clear, easy to understand and implement. Whether all low-level concerns are shared initially with the DSL (or a nominated person (such as a values guardian/safeguarding champion)), or with the headteacher/principal is a matter for the school or college to decide. If the former, then the DSL should inform the headteacher/principal of all the low-level concerns and in a timely fashion according to the nature of each particular low-level concern. The headteacher/principal should be the ultimate decision maker in respect of all low-level concerns, although it is recognised that depending on the nature of some low-level concerns and/or the role of the DSL in some schools/colleges, the headteacher/principal may wish to consult with the DSL and take a more collaborative decision making, approach.

Low-level concerns which are shared about supply staff and contractors should be

notified to their employers, so that any potential patterns of inappropriate behaviour can be identified.

If schools and colleges are in any doubt as to whether the information which has been shared about a member of staff as a low-level concern in fact meets the harm threshold, they should consult with their LADO.

Schools and colleges should ensure they create an environment where staff are encouraged and feel confident to self-refer, where, for example, they have found themselves in a situation which could be misinterpreted, might appear compromising to others, and/or on reflection they believe they have behaved in such a way that they consider falls below the expected professional standards.

Recording low-level concerns

All low-level concerns should be recorded in writing by the designated safeguarding lead (or deputy). The record should include details of the concern, the context in which the concern arose, and action taken. The name of the individual sharing their concerns should also be noted, if the individual wishes to remain anonymous then that should be respected as far as reasonably possible.

Establishments, Schools and colleges can decide where these records are kept, but they must be kept confidential, held securely and comply with the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR) (see paragraph 109 of Keeping Children Safe in Education 2021 for more information).

Records should be reviewed so that potential patterns of concerning, problematic or inappropriate behaviour can be identified. Where a pattern of such behaviour is identified, the school or college should decide on a course of action, either through its disciplinary procedures or where a pattern of behaviour moves from a concern to meeting the harms threshold, in which case it should be referred to the LADO. Consideration should also be given to whether there are wider cultural issues within the school or college that enabled the behaviour to occur and where appropriate policies could be revised or extra training delivered to minimise the risk of it happening again.

It is for schools and colleges to decide how long they retain such information, but it is recommended that it is retained at least until the individual leaves their employment.

References

This policy makes it clear that Establishments schools and colleges should only provide

substantiated safeguarding allegations in references. Low level concerns should not be included in references unless they relate to issues which would normally be included in a reference, for example, misconduct or poor performance.

It follows that a low-level concern which relates exclusively to safeguarding (and not to misconduct or poor performance) should not be referred to in a reference. However, where a low-level concern (or group of concerns) has met the threshold for referral to the LADO and found to be substantiated, it should be referred to in a reference.

Responding to low-level concerns

Concerns about safeguarding should be reported to the designated safeguarding lead or their deputy. The establishment, school or college policy should set out the procedure for responding to reports of low-level concerns. If the concern has been raised via a third party, the designated safeguarding lead should collect as much evidence as possible by speaking:

• directly to the person who raised the concern, unless it has been raised anonymously.

• to the individual involved and any witnesses.

The information collected will help them to categorise the type of behaviour and determine what further action may need to be taken. All of this needs to be recorded along with the rationale for their decisions and action taken.

The low-level concerns policy may be a reflection and extension of the establishment, school or college's wider staff behaviour policy/code of conduct